



SOCIAL SECURITY ADMINISTRATION

20 CFR Parts 404 and 416

[Docket No. SSA-2022-0013]

RIN 0960-AI71

Setting the Manner of Appearance of Parties and Witnesses at Hearings

AGENCY: Social Security Administration.

ACTION: Notice of proposed rulemaking.

SUMMARY: We propose to update our hearing regulations by changing the terms “video teleconference” to “video”; changing “telephone” to “audio”; and permitting “video” and “audio” to be used as standard manners of appearance. These changes would clarify that claimants may appear for hearings remotely, using private electronic devices that we do not own, operate, or approve. The proposed changes would also make clear that a claimant may appear for a hearing using approved online video conferencing applications, rather than conferencing options using equipment that we own or approve. Additionally, while our current regulations permit us to schedule claimants to appear by telephone in limited circumstances only, we propose to schedule claimants to appear by audio without similar restrictions, if the claimant does not object to appearing in that manner. We expect that these changes would provide us and claimants with additional flexibility, which would allow us to manage our hearing process more efficiently.

DATES: To ensure that your comments are considered, we must receive them no later than **[INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER.]**

ADDRESSES: You may submit comments by any one of three methods—Internet, fax, or mail. Do not submit the same comments multiple times or by more than one method. Regardless of which method you choose, please state that your comments refer to Docket

No. SSA-2022-0013 so that we may associate your comments with the correct regulation.

Caution: You should be careful to include in your comments only information that you wish to make publicly available. We strongly urge you not to include in your comments any personal information, such as Social Security numbers or medical information.

1. Internet: We strongly recommend that you submit your comments via the Internet. Please visit the Federal eRulemaking portal at <https://www.regulations.gov>. Use the Search function to find docket number SSA-2022-0013. The system will issue a tracking number to confirm your submission. You will not be able to view your comment immediately because we must post each comment manually. It may take up to a week for your comment to be viewable.

2. Fax: Fax comments to 1-833-410-1631.

3. Mail: Mail your comments to the Office of Regulations, Social Security Administration, 3rd Floor (East), Altmeyer Building, 6401 Security Boulevard, Baltimore, Maryland 21235-6401.

Comments are available for public viewing on the Federal portal at <https://www.regulations.gov> or in person, during regular business hours, by arranging with the contact person identified below.

FOR FURTHER INFORMATION CONTACT: Susan Swansiger, Office of Hearings Operations, Social Security Administration, 5107 Leesburg Pike, Falls Church, VA 22041, (703) 605-8500. For information on eligibility or filing for benefits, call our national toll-free number, 1-800-772-1213 or TTY 1-800-325-0778, or visit our Internet site, Social Security Online, at <https://www.ssa.gov>.

SUPPLEMENTARY INFORMATION:

Background

When we determine whether a claimant is disabled under title II or title XVI of the Social Security Act (Act), we generally follow an administrative review process that

consists of the following steps: an initial determination, a reconsideration, a hearing, which is held by an administrative law judge (ALJ), and Appeals Council review.¹ After completing these steps, claimants may request judicial review of our final decision by filing a civil action in a Federal district court.

As is noted above, the third step in the administrative review process is a hearing, which is held by an ALJ. Our current regulations allow us to set the time and place for a hearing, and allow us to schedule a claimant to appear in one of three ways: by video teleconferencing (VTC), in person, or by telephone.² We generally schedule claimants to appear in person or by VTC, based on a consideration of several factors.³ We have traditionally used the term VTC to refer to an appearance by video using our equipment or equipment that we approve. We schedule claimants to appear by telephone in certain limited circumstances only, such as when we find an appearance by VTC or in person is not possible, or if other extraordinary circumstances prevent the claimant from appearing by VTC or in person.⁴

Under our current regulations, claimants can object to appearing by VTC. To object to appearing by VTC, claimants must notify us in writing within 30 days after the date they receive a notice advising that we may schedule them to appear by VTC. If they notify us within that period, and their residence does not change while the request for hearing is pending, we schedule them to appear at a hearing in person.⁵ Our current

¹ 20 CFR 404.900(a) and 416.1400(a).

² 20 CFR 404.929, 404.936, 416.1429, and 416.1436.

³ 20 CFR 404.936(c)(1) and 416.1436(c)(1).

⁴ 20 CFR 404.936(c)(2) and 416.1436(c)(2). Our regulations also explain that if claimants are incarcerated and VTC is not available, we will schedule their appearance by telephone, unless we find that there are facts in the particular case that provide a good reason to schedule the appearance in person, if allowed by the place of confinement, or by VTC or in person upon release. 20 CFR 404.936(c)(3) and 416.1436(c)(3). Our regulations also permit us, in limited circumstances, to schedule the claimant's appearance by telephone to protect the safety of the public and our employees. Specifically, we may schedule the claimant to appear by telephone or VTC if the Hearing Office Chief Administrative Law Judge determines that the claimant or another individual poses a reasonable threat to the safety of our employees or other participants in the hearing. 20 CFR 404.937(b)(2) and 416.1437(b)(2). We will also schedule a claimant to appear by telephone if we have banned the claimant from any of our facilities. 20 CFR 404.937(c) and 416.1437(c).

⁵ 20 CFR 404.936(d) and 416.1436(d).

regulations also allow us to evaluate good cause for late objections to appearing by VTC.⁶

In March 2020, we closed our offices to walk-in traffic, suspended in-person and VTC appearances, and began offering claimants an option to appear at hearings by telephone in response to the Coronavirus Disease 2019 (COVID-19) national public health emergency. We later offered claimants the additional option to appear by online video.⁷ Our use of online video appearances in response to COVID-19 was the first time we allowed claimants to appear using: 1) private electronic devices (rather than our equipment or agency-approved equipment); and 2) third-party software designated by us, rather than the proprietary software approved for use on our equipment or agency-approved equipment.⁸ Because of the sudden and unique circumstances of the COVID-19 national public health emergency, we would not conduct a hearing by telephone or online video unless the claimant consented to appear in that manner.

To obtain consent, we sent claimants informational notices about telephone and online video appearances as well as a written agreement form.⁹ This agreement form allows claimants to indicate whether or not they agree to appear by telephone or online video.¹⁰ As of December 2022, we have completed over 65,000 hearings by online video

⁶ 20 CFR 404.936(d)(2) and 416.1436(d)(2).

⁷ We began offering appearances at hearings by telephone in March 2020 and by online video in December 2020. Currently, we conduct online video appearances using a software application called “Microsoft (MS) Teams.” For more information, see https://www.ssa.gov/appeals/hearing_video.html.

⁸ While we had already been allowing representatives to purchase and use agency-approved video equipment for Representative Video Hearing Project hearings, it was only in response to the COVID-19 public health emergency that we first allowed representatives to use their own equipment for video hearings, regardless of whether that equipment was agency-approved. For more information on the Representative Video Project, see Chief Judge Bulletin (CJB) 11-04 and https://www.ssa.gov/appeals/documents/Representative_Video_Project_RVP-508.pdf.

⁹ An example of the form is available here: https://www.ssa.gov/appeals/documents/21-158_COVID-19_HearingAgreementForm_RepresentedClaimantandRepresentative.pdf. The original form from July 2020 provided the telephone option only. In December 2020, we updated the form to also include the online video option.

¹⁰ Claimants can make separate selections for telephone and online video options. For example, claimants can indicate that they agree to appear by telephone but not by online video.

and 900,000 hearings by telephone.¹¹

In July 2021, we began sending surveys to claimants who appeared at hearings by online video, to gauge their satisfaction with the process. We asked them to rate four statements regarding their online video experience on a scale from 1 to 5, where 1 meant “strongly disagree” and 5 meant “strongly agree.” The four statements were: 1) the instructions sent in advance were helpful; 2) it was easy to connect to my online video hearing; 3) I was satisfied with the audio quality of my online video hearing; and 4) I was satisfied with the video quality of my online video hearing. Since August 2021, the overall satisfaction score has been 4.2 or higher, and 83 percent or more of respondents in each month since then have reported an overall satisfaction rate of a 4 or 5.¹²

The changes we implemented starting in March 2020 were a direct response to the sudden and unique circumstances of the COVID-19 national public health emergency, and for that reason we set them up as temporary changes. Based on our positive experience with remote appearances during the COVID-19 national public health emergency, and in an effort to incorporate greater flexibility into our rules, we propose to make audio and video standard manners of appearance in our hearing process.

Proposed Changes and Justification

We propose to update our hearing regulations in the following ways: 1) replace the term “video teleconference” with “video”; 2) replace “telephone” with “audio”; and

¹¹ See “Number of Telephone and Online Video Hearings,” in the Manner of Appearance Notice of Proposed Rulemaking Supporting Data Document, available at www.regulations.gov as a supporting document for Docket SSA-2022-0013.

¹² July 2021 did not represent a full month of data and covered only July 16-31. For that partial month, the overall satisfaction score was 4.2 and 77.7% of people reported an overall satisfaction score of a 4 or 5. The overall satisfaction scores and percentage of people who reported an overall satisfaction score of a 4 or 5 for other months are as follows: August 2021, 4.3, 83 percent; September 2021, 4.5, 88.2 percent; October 2021, 4.4, 84 percent; November 2021, 4.4, 87 percent; December 2021, 4.5, 89.5 percent; January 2022, 4.4, 85.3 percent; February 2022, 4.4, 85.7 percent; March 2022, 4.4, 85 percent; April 2022, 4.4, 86.7 percent; May 2022, 4.5, 87.7 percent; June 2022, 4.5, 88.5 percent; July 2022, 4.4, 86.1 percent; August 2022, 4.4, 85.3 percent; and September 2022, 4.3, 83.8 percent. Note: We did not send surveys in February 2022. The data reported for that month represented surveys we sent in previous months that were submitted to us in February 2022. See Table 5, “Claimant Satisfaction Survey Report,” in the Manner of Appearance Notice of Proposed Rulemaking Supporting Data Document available at <https://www.regulations.gov> as a supporting document for Docket SSA-2022-0013.

3) make “video” and “audio” standard manners of appearance in our hearing process.

With these changes, we could schedule claimants to appear for hearings using private electronic devices that we do not own, operate, or approve and using third-party software designated by us, rather than the proprietary software approved for use on our equipment or agency-approved equipment. Additionally, these changes would allow us to schedule claimants to appear by audio without the same limitations that currently restrict our ability to schedule claimants to appear by telephone.

These proposed changes would also affect how we schedule a witness’s (including a medical or vocational expert’s) manner of appearance at a hearing.¹³ Under our current policy, we generally direct anyone we call as a witness to appear by telephone or VTC. Under the proposed policy, we would generally direct anyone we call as a witness to appear by audio or video. As under our current policy, a witness called by the claimant would generally appear in the same manner as the claimant, unless the witness is unable to do so.¹⁴ If the witness is unable to appear in the same manner as the claimant, we would generally direct the witness to appear by video or audio.¹⁵

We also propose to revise our regulations regarding scheduling the manner of appearance for individuals who appear before the Appeals Council for oral argument. Our current regulations state that the Appeals Council will determine whether an individual will appear by VTC, in person, or in certain circumstances, by telephone.¹⁶ Similar to the changes we proposed above, we would change “video teleconference” to “video” and “telephone” to “audio” and allow video and audio as standard manners of appearance. These changes would keep the manners of appearance for oral arguments

¹³See 20 CFR 404.936(c)(4) and 416.1436(c)(4).

¹⁴ See 20 CFR 404.950(e) and 416.1450(e).

¹⁵ As examples, if a claimant were scheduled to appear by video and a witness disagreed with the third-party terms of service associated with a video appearance, or if the witness did not have the resources to appear by video (e.g., internet service was unavailable), we would consider the witness unable to appear by video.

¹⁶ See 20 CFR 404.976(c) and 416.1476(c).

before the Appeals Council aligned with the manners of appearance for hearings before an ALJ.

Finally, we would add language to 20 CFR 404.944 and 416.1444 to clarify that an ALJ could stop a hearing temporarily and continue it at a later date if the ALJ found that one or more variables outside of our control, such as audio quality or video quality, materially affected a hearing. This option would ensure that improperly functioning technology does not preclude a claimant from receiving a full and fair hearing.

We propose these changes because our experience with almost a million telephone and online video appearances during the COVID-19 national public health emergency has shown us that additional flexibilities in setting manners of appearance are appropriate and could benefit us as well as claimants.

Because the term “video teleconference” or “VTC” in our current regulations has traditionally referred to hearings where claimants use our video equipment in a location that we assign, we propose to replace it with the broader term “video,” which would also include appearances by online video as well as appearances by other video technologies that may be available now or become available in the future.¹⁷

Similarly, the term “telephone” in our current regulations does not necessarily include audio appearances over the internet using software applications. The proposed definition of “audio” would include telephone appearances, appearances over the internet where video is not used, and appearances by other similar technologies that may be available now or become available in the future.¹⁸ Thus, the term “audio” is broader than “telephone” because it would include telephone appearances, audio appearances over the internet where video is not used, and other similar technologies as options. For audio

¹⁷ Any application used to conduct hearings would comply with applicable Federal laws, regulations, and policies. We would provide notice of any new applications that we add in the future by publishing a notice, for instance in the *Federal Register* or on our website.

¹⁸ See footnote 17.

appearances over the internet, we would call a claimant's telephone number.

Lastly, under our current regulations, we cannot schedule claimants to appear by telephone except under certain limited circumstances, such as when we find an appearance by video teleconference or in person is not possible or other extraordinary circumstances prevent the claimant from appearing by video teleconference or in person.¹⁹ We propose to schedule audio appearances (which include telephone appearances) without those limitations, if the claimant does not object to appearing by audio.²⁰

Advantages of Video or Audio as Standard Manners of Appearance

Our proposal would benefit claimants and us in several ways: 1) there would be more ways to appear at a hearing; 2) we could balance our hearing workloads more efficiently among hearing offices; and 3) we would be prepared for future emergency events, like the COVID-19 national public health emergency, that could require us to temporarily suspend in-person or VTC hearings.

1) More Ways to Appear at a Hearing Would be Available

Before the COVID-19 national public health emergency, we generally scheduled claimants to appear by VTC or in person. In certain limited circumstances, we would require a claimant to appear by telephone. Our proposed regulations would allow us to schedule a claimant to appear in person, by video (which would include traditional VTC as well as online video), or by audio. Having these additional flexibilities may make it easier for many claimants to attend their hearings.

If we scheduled claimants to appear by audio or video, they could attend the hearing in their home or at another convenient location of their choice. If a claimant objected to appearing by video and also objected to appearing by audio, we would

¹⁹ See footnote 4.

²⁰ As with our current rules, we would require a claimant to appear by audio in certain limited circumstances.

schedule that claimant to appear in person, unless we need to schedule the claimant to appear by audio in one of the limited circumstances discussed below and set forth in our proposed rule.

2) We Could Balance Our Hearings More Efficiently Among Hearing Offices

As is discussed above, before the COVID-19 national public health emergency, we generally scheduled claimants to appear at hearings in person or by VTC in one of our facilities, using our equipment. With these proposed changes, we expect to schedule proportionally fewer in-person appearances and more appearances by audio and video than we did before the national public health emergency.

Claimants may appear by audio and video when they are located anywhere within the United States or its territories, rather than just when they are located within a hearing office's service area. Therefore, we could schedule audio and video appearances with any hearing office in the country. We expect that this added flexibility, which would allow us to schedule hearings for claimants with ALJs outside of the hearing office's service area, would help reduce overall wait and processing times across the country and reduce the wait and processing time disparities that exist from region to region and office to office. Specifically, we could transfer cases where the claimant does not object to appearing by video or audio from offices or regions with larger caseloads to offices or regions with smaller caseloads, to help balance our processing times. To provide some perspective, in fiscal year 2021, under our temporary emergency procedures that permitted audio and video appearances, we transferred 16.6 percent of new hearing requests to different hearing offices, which resulted in faster dispositions and reduced wait time for claimants.²¹ Similarly, in fiscal year 2022, we transferred 17.0 percent of new hearing

²¹ In fiscal year 2021, we received 383,650 cases at the hearing level, and we transferred 63,702 cases to different offices to help balance workloads. See Table 1, "Fiscal Year 2021, Summary of Permanent Transfer Cases for Workload Assistance" and Table 3, "Fiscal Year 2021, Caseload Analysis Report," in the Manner of Appearance Notice of Proposed Rulemaking Supporting Data Document, available at

requests to different hearing offices.²²

We also note that, under the proposed changes, we would not have to secure a physical space for most audio and video appearances, which would simplify the scheduling process. We currently have a fixed number of hearing rooms, which we must coordinate the scheduling of among our ALJs and claimants. Under this proposed rule, we would not need to secure a physical space for many audio and video appearances because the claimants would generally appear from private locations of their choice, and ALJs would generally conduct hearings from a private location.

3) We Would Be Prepared for Future Emergency Events That Could Require Temporary Suspension of In-Person or VTC Hearings

The COVID-19 national public health emergency and our experience with more localized emergencies, such as hurricanes, tornadoes, and floods, have shown that we must be prepared for unexpected circumstances. This proposed regulation would allow us to continue conducting hearings remotely—by audio or video—if we need to close any of our facilities to the public due to an emergency circumstance. That flexibility would limit disruptions to our hearing processes that might otherwise occur.

Objection to Manner of Appearance

Our current regulations allow claimants to object to appearing by VTC within 30 days after they receive the notice that we may schedule them to appear by VTC (20 CFR 404.936(d) and 416.1436(d)). If they object within that 30-day period, and their residence

<https://www.regulations.gov> as a supporting document for Docket SSA-2022-0013. Additionally, our average case processing time decreased from 506 days in fiscal year 2019, which was before the COVID-19 national public health emergency, to 326 days in fiscal year 2021. See Table 6, “Average Processing Time,” available at <https://www.regulations.gov> as a supporting document for Docket SSA-2022-0013.

²² In fiscal year 2022, we received 349,892 cases at the hearing level, and we transferred 59,418 cases to different offices to help balance workloads. See Table 2, “Fiscal Year 2022, Summary of Permanent Transfer Cases for Workload Assistance” and Table 4, “Fiscal Year 2022, Caseload Analysis Report,” in the Manner of Appearance Notice of Proposed Rulemaking Supporting Data Document, available at <https://www.regulations.gov> as a supporting document for Docket SSA-2022-0013. Additionally, our average case processing time decreased from 506 days in fiscal year 2019, which was before the COVID-19 national public health emergency, to 333 days in fiscal year 2022. See Table 6, “Average Processing Time,” available at <https://www.regulations.gov> as a supporting document for Docket SSA-2022-0013.

does not change while the request for hearing is pending, we set the hearing for a time and place at which the claimant may appear before the ALJ in person.²³

As we do in our current VTC policy, we propose to allow claimants to object to appearing by audio, video, or both within 30 days after they receive a notice from us informing them that we may schedule them to appear by audio or video. Though this proposal mirrors our current VTC policy, it is different from the temporary process we adopted during the COVID-19 national public health emergency. Under that temporary process, we required that a claimant consent to appear at a hearing by online video or telephone. We adopted that process in response to the unique exigencies that existed during the COVID-19 national public health emergency.

Under this proposal, claimants could object to appearing at a hearing by video, audio, or both. If a claimant objected to appearing by video and also objected to appearing by audio, we would schedule that claimant to appear at a hearing in person. However, in certain limited circumstances discussed below, we would mandate an audio appearance.²⁴

In our notice to claimants, we would include information about the possible manners of appearance so claimants would be able to make informed decisions about whether to object to appearing by video, audio, or both. We would also provide information about objecting to an appearance by video, audio, or both. For example, we would inform claimants that there are three types of “video” appearances: (1) appearing by online video with non-agency supplied electronic devices and internet connection, (2) appearing by online video in a hearing office with agency-supplied electronic devices and internet connection, and (3) appearing by traditional VTC. For the first appearance type, claimants participate by video over the internet using a third-party application from any

²³ 20 CFR 404.936(d) and 416.1436(d).

²⁴ See proposed 20 CFR 404.936(c)(2) and (3), 404.937, 416.1436(c)(2) and (3), and 416.1437 for the very limited circumstances when we could mandate an audio appearance.

private location they prefer within the United States or its territories if they have a compatible device, such as a computer, tablet, or smartphone, and internet connection. For the second appearance type, claimants participate by video over the internet using a third-party application from one of our hearing offices using our devices and internet connection. For the third appearance type, claimants participate in a traditional VTC hearing from a hearing office, a field office, or an appointed representative's office, if a claimant is represented, using our proprietary software approved for use on our video equipment.

We would explain in our notice that a claimant would have the ability to object to each of these ways of appearing by video. Our notice would also explain what a claimant would need in order to appear in each manner, as applicable. For example, our notice would explain that to appear by online video, a claimant would need to have access to: (1) a desktop computer, laptop computer, tablet, or phone with a camera, microphone, and speakers; (2) a secure internet connection; (3) email; and (4) a quiet, private location.

Importantly, we propose to keep the current regulatory provisions for evaluating good cause for late submission of an objection, though those provisions would apply to both audio and video appearances.²⁵ Thus, if, after the deadline for submitting objections, a claimant objected to appearing by video, audio, or both, the ALJ would evaluate whether good cause existed for the late objection. Examples of good cause would include circumstances where the claimant disagrees with the terms of service for a third-party application or lacks the resources to appear by video.

We considered proposing a requirement that claimants specifically consent to appear by video or audio before we would schedule one of those manners of appearance. However, our experience during the COVID-19 national public health emergency indicates that it would be problematic to adopt that type of requirement. Under our

²⁵ See proposed 20 CFR 404.936(d)(2) and 416.1436(d)(2).

temporary COVID-19 business process, we required claimants to consent before we would schedule them to appear by telephone or online video. To obtain the claimant's consent, we contacted them or their appointed representative by telephone, or we mailed an informational notice and agreement form. However, we were unable to reach or did not receive completed forms from approximately 30 percent of claimants.²⁶ If a claimant did not consent to appear by telephone or online video, we had to delay scheduling a hearing until our offices reopened to the public and we resumed conducting in-person and VTC hearings. Because we did not know when we would be able to reopen our offices, we had to delay scheduling many hearings for an indefinite period. That circumstance caused delays in our hearing process. We expect that when a future emergency situation arises, whether nationally or locally, a requirement for claimant consent would similarly hinder our ability to ensure necessary continuity of service. Moreover, even absent an emergency, our experience over many years has been that it is often difficult to receive timely responses from some claimants when we ask them to contact us. Under our proposed rule, which would provide a set timeframe within which claimants could opt out of appearing by video, audio, or both, we anticipate we would be better able to limit the number of cases that we need to hold while waiting for claimants to take action. Moreover, as we discussed previously, we would also consider a good cause exception if a claimant submitted a late objection to appearing by audio, video, or both.

When We Would Require Audio Appearances

Under our current regulations, we require a claimant to appear at a hearing by telephone only in certain limited circumstances. Those circumstances exist when: (1) we find an appearance by VTC or in person is not possible;²⁷ (2) other extraordinary

²⁶ See "Percentage of Nonresponses," in the Manner of Appearance Notice of Proposed Rulemaking Supporting Data Document available at www.regulations.gov as a supporting document for Docket SSA-2022-0013.

²⁷ 20 CFR 404.936(c)(2) and 416.1436(c)(2).

circumstances prevent the claimant from appearing by VTC or in person;²⁸ (3) the claimant is incarcerated and VTC is not available, unless we find that facts in the case provide a good reason to schedule an appearance in person, if allowed, or by VTC or in person upon the claimant's release;²⁹ or (4) when we have banned the claimant from any of our facilities.³⁰ Additionally, under our current regulations, we may schedule a claimant to appear by VTC or telephone when the Hearing Office Chief Administrative Law Judge (HOCALJ) determines that the claimant poses a reasonable threat to the safety of our employees or other participants in the hearing.³¹ Historically, we have seldom required a claimant to appear at a hearing by telephone. When we do require a claimant to appear by telephone, because of the special circumstances that exist, we do not accept objections to that manner of appearance. We propose to keep all these current regulatory provisions, except that we would replace the word "telephone" with "audio," and we would replace "VTC" with video. For audio appearances over the internet, we would call a claimant's telephone number. We would also specify that when the HOCALJ determines that a claimant poses a reasonable threat to the safety of our employees or other participants in the hearing, the HOCALJ will require the claimant to appear by audio.

Table 1: Manners of Appearance Available

The table below compares the manner of appearance options that were available before the COVID-19 national public health emergency, those that were available during the COVID-19 national public health emergency, and what would be available under our proposed regulations. It also notes whether a claimant may object to a manner of appearance or must consent to a manner of appearance.

²⁸ *Id.*

²⁹ 20 CFR 404.936(c)(3) and 416.1436(c)(3).

³⁰ 20 CFR 404.937(c) and 416.1437(c).

³¹ 20 CFR 404.937(b)(2) and 416.1437(b)(2).

Manner of appearance	Available before the COVID-19 national public health emergency	Available during the COVID-19 national public health emergency	Would be available under our proposed regulations
In-person	Yes (claimant cannot object)	Postponed from March 2020 through March 2022, when we began incrementally reopening our hearing offices to the public. (claimant cannot object)	Yes (claimant cannot object)
VTC	Yes (claimant can object)	Postponed from March 2020 through March 2022, when we began incrementally reopening our hearing offices to the public. (claimant can object)	Yes (under video option) (claimant can object)
Online video	No	Available as of December 2020 (claimant must consent before we will schedule that manner of appearance)	Yes (under video option) (claimant can object)
Audio (formerly “telephone”)	Yes, but only in very limited circumstances. (claimant cannot object when required)	Available as of March 2020 (claimant must consent before we will schedule that manner of appearance, but we will require a claimant to appear by telephone in very limited circumstances)	Yes (claimant can object, unless we require the claimant to appear by audio, (called via telephone number) in very limited circumstances)

Rulemaking Analyses and Notices

We will consider all comments we receive on or before the close of business on the comment closing date indicated above. The comments will be available for examination in the rulemaking docket for these rules at the above address. We will file comments received after the comment closing date in the docket and may consider those comments to the extent practicable. However, we will not respond specifically to untimely comments. We may publish a final rule at any time after close of the comment period.

Clarity of This Rule

Executive Order 12866, as supplemented by Executive Orders 13563 and 14094, requires each agency to write all rules in plain language. In addition to your substantive comments on this proposed rule, we invite your comments on how to make the rule easier to understand.

For example:

- Would more, but shorter, sections be better?
- Are the requirements in the rule clearly stated?
- Have we organized the material to suit your needs?
- Could we improve clarity by adding tables, lists, or diagrams?
- What else could we do to make the rule easier to understand?
- Does the rule contain technical language or jargon that is not clear?
- Would a different format make the rule easier to understand, e.g.,

grouping and ordering of sections, use of headings, paragraphing?

When Will We Start to Use This Rule?

We will not use this rule unless we publish a final rule in the *Federal Register* after evaluating the public comments. All final rules we issue include an effective date.

We will continue to use our current rules until that date. If we publish a final rule, we will

include a summary of those relevant comments we received along with responses and an explanation of how we will apply the new rule.

Regulatory Procedures

Executive Order 12866, as Supplemented by Executive Orders 13563 and 14094

We consulted with the Office of Management and Budget (OMB) and determined that this rule does not meet the criteria for a significant regulatory action under Executive Order 12866, as supplemented by Executive Orders 13563 and 14094. Therefore, OMB did not review it.

Anticipated Costs/Transfers to Our Program

The Office of the Chief Actuary estimates that there will be no significant changes in allowance rates for disability cases under the Old-Age, Survivors, and Disability Insurance (OASDI) and Federal SSI programs due to implementation of the proposed regulation. The primary effects from implementing this proposed rule would be small cash flow effects due to conducting hearings and issuing decisions more timely. These changes would therefore be expected to result in negligible effects on scheduled OASDI benefit payments and Federal SSI payments over the period from fiscal year 2023 through fiscal year 2033.

Anticipated Administrative Cost/Savings

The Office of Budget, Finance, and Management estimates net administrative savings of less than 15 work years and \$2 million annually. We anticipate a small savings for lower administrative law judge, claimant, and representative travel costs, offset some by slightly higher costs for an increase in forms returned to us by claimants.

Anticipated Qualitative Benefits

We expect that the flexibility provided by this proposal would benefit claimants and our agency in several ways. First, except when claimants object, we would be able to continue scheduling claimants to appear at hearings remotely, by video or audio. Our

experience, as well as that of claimants, during the COVID-19 national public health emergency showed that remote appearances are acceptable and beneficial to our hearing process. If claimants do not object, and we schedule them to appear by video or audio, they may not incur inconveniences and could save on costs associated with transportation (e.g., gas, maintenance of vehicle, bus fare), and they may save time that they would otherwise have spent traveling. Likewise, they may not need to secure a replacement caregiver if they supervise family members or others, such as children, who cannot be left alone. In addition, if claimants have difficulty leaving the house because of limited mobility or other reasons, a video or audio appearance would allow them to appear from a private location of their choice, such as their home.

This proposal would also allow us to balance our workloads more efficiently among hearing offices because we could more easily transfer cases where the claimant would be scheduled to appear by video or audio from one hearing office to another. We expect that this proposal would help us to reduce overall wait and processing times across the country and reduce the disparities that exist from region to region and office to office.

Finally, the changes proposed in these rules would allow us to be prepared for future emergency events, including localized events such as hurricanes, tornadoes, and floods, and national public health emergencies similar to COVID-19 that could require us to temporarily suspend in-person or VTC hearings.

Executive Order 13132 (Federalism)

We analyzed this proposed rule in accordance with the principles and criteria established by Executive Order 13132 and determined that the proposed rule will not have sufficient federalism implications to warrant the preparation of a federalism assessment. We also determined that this proposed rule will not preempt any State law or State regulation or affect the States' abilities to discharge traditional State governmental functions.

Regulatory Flexibility Act

We certify that this proposed rule will not have a significant economic impact on a substantial number of small entities because it affects individuals only. Therefore, a regulatory flexibility analysis is not required under the Regulatory Flexibility Act, as amended.

Paperwork Reduction Act (PRA)

SSA already has existing OMB PRA-approved information collection tools relating to this proposed rule under OMB Control No. 0960-0671 which include: Form HA-504, Acknowledgement of Receipt (Notice of Hearing); Form HA-L83, Acknowledgement of Receipt (Notice of Hearing) Cover Letter; Form HA-55, Objection to Appearing by Video Teleconferencing; Form HA-L2, Objection to Appearing by Video Teleconferencing Cover Letter (HA-L2); and Forms HA-510 and HA-510-OP1, Waiver of Written Notice of Hearing.

The proposed rules would require revisions to Form HA-55, Objection to Appearing by Video Teleconferencing and the accompanying HA-L2, Objection to Appearing by Video Teleconferencing Cover Letter. Due to the proposed rules, we expect to revise the HA-L2 to remove the discussion of the manners of appearance, and we intend to create a new notice to address those in accordance with any final rules. The new notice would briefly explain audio and video appearances and all the modalities encompassed by audio only and video hearings. Similarly, we expect to revise Form HA-55 to provide the option to object to each of the modalities encompassed by audio and video appearances. We will also eliminate the COVID-19 Remote Hearing Options notice and the accompanying COVID-19 Remote Hearing Agreement form.

We will obtain OMB approval for these new modalities and revisions to OMB Clearance Package 0960-0671 concurrently with these final rules. The chart below shows the revised burden estimates, to be effective when we finalize the rule:

Modality of Completion	Number of Respondents	Frequency of Response	Average Burden Per Response (minutes)	Total Annual Burden (hours)	Average Theoretical Hourly Cost Amount (dollars)*	Total Annual Opportunity Cost (dollars)**
HA-504+ HA-504-OP1 HA-504-OP2	900,000	1	30	450,000	\$12.81*	\$5,764,500**
HA-L83 - 404.936(e); 416.1436(e)	900,000	1	30	450,000	\$12.81*	\$5,764,500**
HA-L83 - Good cause for missing deadline - 404.936(e)(1); 416.1436(e)(1)	5,000	1	5	417	\$12.81*	\$5,342**
HA-L83 - Objection stating issues in notice are incorrect – sent 5 days prior to hearing 404.939; 416.1439	45,000	1	5	3,750	\$12.81*	\$48,038**
HA-L2 Acknowledgement Letter	500,000	1	5	41,667	\$12.81*	\$533,754**
New notice and HA-55 – 404.936; 404.938; 416.1436; 416.1438	500,000	1	5	41,667	\$12.81*	\$533,754**
HA-L2 - Verification of New Residence 404.936(c)(1); 416.1436(d)(1)	45,000	1	5	3,750	\$12.81*	\$48,038**

New Notice: Notification of objection to telephone, video teleconference, or online video more than 30-days after receipt of notice showing good cause 404.936(c)(2); 416.1436(d)(2)	13,500	1	10	2,250	\$12.81*	\$28,823**
HA-510; HA-510-OP1 - 404.938(a); 416.1438(a)	4,000	1	2	133	\$12.81**	\$1,704**
Totals	2,912,500			993,634		\$12,728,453 **

* We based this figure on the average DI payments based on SSA's current FY 2022 data

(<https://www.ssa.gov/legislation/2023factsheet.pdf>).

** This figure does not represent actual costs that SSA is imposing on recipients of Social Security payments to complete this application; rather, these are theoretical opportunity costs for the additional time respondents will spend to complete the application. **There is no actual charge to respondents to complete the application.**

SSA submitted an Information Collection Request for clearance to OMB. We are soliciting comments on the burden estimates above; the need for the information; its practical utility; ways to enhance its quality, utility, and clarity; and ways to minimize the burden on respondents, including the use of automated techniques or other forms of information technology. If you would like to submit comments, please send them to the following locations:

Office of Management and Budget

Attn: Desk Officer for SSA

Fax Number: 202-395-6974

E-mail address: OIRA_Submission@omb.eop.gov

Social Security Administration, OLCA

Attn: Reports Clearance Director

3100 West High Rise

6401 Security Blvd.

Baltimore, MD 21235

Fax: 410-966-2830

Email address: OR.Reports.Clearance@ssa.gov

You can submit comments until **[INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*]**, which is 60 days after the publication of this document. However, your comments will be most useful if you send them to SSA by **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*]**, which is 30 days after publication. To receive a copy of the OMB clearance package, contact the SSA Reports Clearance Officer using any of the above contact methods. We prefer to receive comments by email or fax.

List of Subjects

20 CFR Part 404

Administrative practice and procedure, Aged, Blind, Disability benefits, Individuals with disabilities, Social security.

20 CFR Part 416

Administrative practice and procedure, Aged, Blind, Disability benefits, Social security, Supplemental Security Income (SSI).

The Acting Commissioner of Social Security, Kilolo Kijakazi, Ph.D., M.S.W., having reviewed and approved this document, is delegating the authority to electronically

sign this document to Faye I. Lipsky, who is the primary Federal Register Liaison for SSA, for purposes of publication in the *Federal Register*.

Faye I. Lipsky,

Federal Register Liaison,

Office of Legislation and Congressional Affairs,

Social Security Administration.

For the reasons set out in the preamble, we propose to amend 20 CFR chapter III, parts 404, subpart J, and 416, subpart N, as set forth below:

PART 404—FEDERAL OLD-AGE, SURVIVORS AND DISABILITY

INSURANCE (1950-)

Subpart J - Determinations, Administrative Review Process, and Reopening of Determinations and Decisions

1. The authority citation for subpart J of part 404 continues to read as follows:

Authority: Secs. 201(j), 204(f), 205(a)-(b), (d)-(h), and (j), 221, 223(i), 225, and 702(a)(5) of the Social Security Act (42 U.S.C. 401(j), 404(f), 405(a)-(b), (d)-(h), and (j), 421, 423(i), 425, and 902(a)(5)); sec. 5, Pub. L. 97-455, 96 Stat. 2500 (42 U.S.C. 405 note); secs. 5, 6(c)-(e), and 15, Pub. L. 98-460, 98 Stat. 1802 (42 U.S.C. 421 note); sec. 202, Pub. L. 108-203, 118 Stat. 509 (42 U.S.C. 902 note).

2. In § 404.929, revise the fourth sentence to read as follows:

§ 404.929 Hearing before an administrative law judge - general.

* * * We will schedule you to appear by audio, video, or in person as set forth in § 404.936.* * *

3. In § 404.936, revise paragraphs (b) through (d) to read as follows:

§ 404.936 Time and place for a hearing before an administrative law judge.

* * * * *

(b) *Where we hold hearings.* We hold hearings in the 50 States, the District of

Columbia, American Samoa, Guam, the Northern Mariana Islands, the Commonwealth of Puerto Rico, and the United States Virgin Islands. The “place” of the hearing is the hearing office or other site(s) at which you and any other parties to the hearing are located when you make your appearance(s) before the administrative law judge by audio, video, or in person. A party to a hearing may only appear from the geographic areas, noted in this subsection, in which we hold hearings.

(c) *Determining manner of hearing to schedule.* We will schedule you or any other party to the hearing to appear by audio, video, or in person.

(1) When we determine your manner of appearance at the hearing, we consider the following factors:

(i) Which manner of appearance would be the most efficient for conducting the hearing; and

(ii) Any facts in your particular case that provide a good reason to schedule your appearance by audio, video, or in person.

(2) Subject to paragraph (c)(3) of this section, we will schedule you or any other party to the hearing to appear by audio when we cannot schedule you to appear by video and extraordinary circumstances prevent you from appearing in person.

(3) If you are incarcerated and a video appearance is not available, we will schedule you to appear by audio, unless we find that there are facts in your particular case that provide a good reason to schedule you to appear in person, if allowed by the place of confinement, or by video or in person upon your release.

(4) We will generally direct any person we call as a witness, other than you or any other party to the hearing, including a medical expert or a vocational expert, to appear by audio or by video. Witnesses you call will appear at the hearing pursuant to § 404.950(e). If they are unable to appear with you in the same manner as you, we will generally direct them to appear by video or by audio. We will consider directing witnesses to appear in

person only when:

(i) A witness is unable to appear by audio or video;

(ii) We determine that an audio or video appearance would be less efficient than conducting the appearance in person; or

(iii) We find that there are facts in your particular case that provide a good reason to schedule this individual's appearance in person.

(5) We follow the procedures set forth in § 404.937 to ensure the safety of the public and our employees in our hearing process.

(d) *Objecting to appearing by audio, video, or both.* Prior to scheduling your hearing, we will notify you that we may schedule you to appear by audio or video. If you object to appearing by audio, video, or both, you must notify us in writing within 30 days after the date you receive the notice. If you only object to appearing by audio, we may schedule you to appear by video. Similarly, if you only object to appearing by video, we may schedule you to appear by audio. If you object to appearing by both audio and video, and your residence does not change while your request for hearing is pending, we will set your hearing for a time and place at which you may make your appearance before the administrative law judge in person.

(1) Notwithstanding any objections you may have to appearing by audio, if you object to appearing by both audio and video and you change your residence while your request for hearing is pending, we may determine how you will appear, including by audio, as provided in paragraph (c) of this section. For us to consider your change of residence when we schedule your hearing, you must submit evidence verifying your new residence. For audio appearances under this subsection, we will call you or any other party to the hearing using your or their telephone number(s).

(2) If you notify us that you object to appearing by audio, video, or both, more than 30 days after the date you receive our notice, we will extend the time period if you

show you had good cause for missing the deadline. To determine whether good cause exists for extending the deadline, we use the standards explained in § 404.911. Examples of good cause include circumstances when you disagree with the terms of service for a third-party application or lack the resources to appear by video.

(3) Notwithstanding any objections you may have to appearing by audio, we will schedule you or any other party to the hearing to appear by audio in the circumstances provided in paragraphs (c)(2) and (3) of this section and in § 404.937(b)(2)(ii) and (c). For audio appearances under this subsection, we will call you or any other party to the hearing using your or their telephone number(s).

* * * * *

4. In § 404.937, revise paragraphs (b)(2)(ii) and (c), and add paragraph (e) to read as follows:

§ 404.937 Protecting the safety of the public and our employees in our hearing process.

* * * * *

(b)* * *

(2) * * *

(ii) Require that the hearing be conducted by audio, notwithstanding any objection to appearing by audio.

(c) If we have banned a claimant from any of our facilities, we will provide the claimant with the opportunity for a hearing that will be conducted by audio, notwithstanding any objection to appearing by audio.

* * * * *

(e) For audio appearances under this section, we will call you or any other party to the hearing using your or their telephone number(s).

* * * * *

5. In § 404.944, revise the second sentence to read as follows:

§ 404.944 Administrative law judge hearing procedures - general.

* * * At the hearing, the administrative law judge looks fully into the issues, questions you and the other witnesses, and, subject to the provisions of § 404.935, accepts as evidence any documents that are material to the issues; may stop the hearing temporarily and continue it at a later date if the administrative law judge finds that there is material evidence missing at the hearing or one or more variables outside of our control, such as audio quality or video quality, materially affects the hearing; and may reopen the hearing at any time before the administrative law judge mails a notice of the decision in order to receive new and material evidence. * * *

6. In § 404.976, revise paragraph (c) to read as follows:

§ 404.976 Procedures before the Appeals Council.

* * * * *

(c) *Oral argument.* You may request to appear before the Appeals Council to present oral argument in support of your request for review. The Appeals Council will grant your request if it decides that your case raises an important question of law or policy or that oral argument would help to reach a proper decision. If your request to appear is granted, the Appeals Council will tell you the time and place of the oral argument at least 10 business days before the scheduled date. The Appeals Council will determine whether your appearance will be by audio, video, or in person, as set forth in § 404.936. The Appeals Council will determine whether any other person relevant to the proceeding will appear by audio, video, or in person as set forth in § 404.936(c)(4).

**PART 416 – SUPPLEMENTAL SECURITY INCOME FOR THE AGED, BLIND,
AND DISABLED**

**Subpart N - Determinations, Administrative Review Process, and Reopening of
Determinations and Decisions**

7. The authority citation for subpart N of part 416 continues to read as follows:

Authority: Secs. 702(a)(5), 1631, and 1633 of the Social Security Act (42 U.S.C. 902(a)(5), 1383, and 1383b); sec. 202, Pub. L. 108-203, 118 Stat. 509 (42 U.S.C. 902 note).

8. In § 416.1429, revise the fourth sentence to read as follows:

§ 416.1429 Hearing before an administrative law judge-general.

* * * We will schedule you to appear by audio, video, or in person as set forth in § 416.1436. * * *

9. In § 416.1436, revise paragraphs (b) through (d) to read as follows:

§ 416.1436 Time and place for a hearing before an administrative law judge.

* * * * *

(b) *Where we hold hearings.* We hold hearings in the 50 States, the District of Columbia, American Samoa, Guam, the Northern Mariana Islands, the Commonwealth of Puerto Rico, and the United States Virgin Islands. The “place” of the hearing is the hearing office or other site(s) at which you and any other parties to the hearing are located when you make your appearance(s) before the administrative law judge by audio, video, or in person. A party to a hearing may only appear from the geographic areas, noted in this subsection, in which we hold hearings.

(c) *Determining manner of hearing to schedule.* We will schedule you or any other party to the hearing to appear by audio, video, or in person.

(1) When we determine your manner of appearance at the hearing, we consider the following factors:

(i) Which manner of appearance would be the most efficient for conducting the hearing; and

(ii) Any facts in your particular case that provide a good reason to schedule your appearance by audio, video, or in person.

(2) Subject to paragraph (c)(3) of this section, we will schedule you or any other party to the hearing to appear by audio when we cannot schedule you to appear by video and extraordinary circumstances prevent you from appearing in person.

(3) If you are incarcerated and a video appearance is not available, we will schedule you to appear by audio, unless we find that there are facts in your particular case that provide a good reason to schedule you to appear in person, if allowed by the place of confinement, or by video or in person upon your release.

(4) We will generally direct any person we call as a witness, other than you or any other party to the hearing, including a medical expert or a vocational expert, to appear by audio or by video. Witnesses you call will appear at the hearing pursuant to § 416.1450(e). If they are unable to appear with you in the same manner as you, we will generally direct them to appear by video or by audio. We will consider directing witnesses to appear in person only when:

(i) A witness is unable to appear by audio or video;

(ii) We determine that an audio or video appearance would be less efficient than conducting the appearance in person; or

(iii) We find that there are facts in your particular case that provide a good reason to schedule this individual's appearance in person.

(5) We follow the procedures set forth in § 416.1437 to ensure the safety of the public and our employees in our hearing process.

(d) *Objecting to appearing by audio, video, or both.* Prior to scheduling your hearing, we will notify you that we may schedule you to appear by audio or video. If you object to appearing by audio, video, or both, you must notify us in writing within 30 days after the date you receive the notice. If you only object to appearing by audio, we may schedule you to appear by video. Similarly, if you only object to appearing by video, we may schedule you to appear by audio. If you object to appearing by both audio and video,

and your residence does not change while your request for hearing is pending, we will set your hearing for a time and place at which you may make your appearance before the administrative law judge in person.

(1) Notwithstanding any objections you may have to appearing by audio, if you object to appearing by both audio and video and you change your residence while your request for hearing is pending, we may determine how you will appear, including by audio, as provided in paragraph (c) of this section. For us to consider your change of residence when we schedule your hearing, you must submit evidence verifying your new residence. For audio appearances under this subsection, we will call you or any other party to the hearing using your or their telephone number(s).

(2) If you notify us that you object to appearing by audio, video, or both, more than 30 days after the date you receive our notice, we will extend the time period if you show you had good cause for missing the deadline. To determine whether good cause exists for extending the deadline, we use the standards explained in § 416.1411. Examples of good cause include circumstances when you disagree with the terms of service for a third-party application or lack the resources to appear by video.

(3) Notwithstanding any objections you may have to appearing by audio, we will schedule you or any other party to the hearing to appear by audio in the circumstances provided in paragraphs (c)(2) and (3) of this section and in § 416.1437(b)(2)(ii) and (c). For audio appearances under this subsection, we will call you or any other party to the hearing using your or their telephone number(s).

* * * * *

10. In § 416.1437, revise paragraphs (b)(2)(ii) and (c), and add paragraph (e) to read as follows:

§ 416.1437 Protecting the safety of the public and our employees in our hearing process.

* * * * *

(b) * * *

(2) * * *

(ii) Require that the hearing be conducted by audio, notwithstanding any objection to appearing by audio.

(c) If we have banned a claimant from any of our facilities, we will provide the claimant with the opportunity for a hearing that will be conducted by audio, notwithstanding any objection to appearing by audio.

* * * * *

(e) For audio appearances under this section, we will call you or any other party to the hearing using your or their telephone number(s).

11. In § 416.1444, revise the second sentence of to read as follows:

§ 416.1444 Administrative law judge hearing procedures - general.

* * * At the hearing, the administrative law judge looks fully into the issues, questions you and the other witnesses, and, subject to the provisions of § 416,1435, accepts as evidence any documents that are material to the issues; may stop the hearing temporarily and continue it at a later date if the administrative law judge finds that there is material evidence missing at the hearing or one or more variables outside of our control, such as audio quality or video quality, materially affects the hearing; and may reopen the hearing at any time before the administrative law judge mails a notice of the decision in order to receive new and material evidence. * * *

12. In § 416.1476, revise paragraph (c) to read as follows:

§ 416.1476 Procedures before the Appeals Council.

* * * * *

(c) *Oral argument.* You may request to appear before the Appeals Council to present oral argument in support of your request for review. The Appeals Council will

grant your request if it decides that your case raises an important question of law or policy or that oral argument would help to reach a proper decision. If your request to appear is granted, the Appeals Council will tell you the time and place of the oral argument at least 10 business days before the scheduled date. The Appeals Council will determine whether your appearance will be by audio, video, or in person as set forth in § 416.1436. The Appeals Council will determine whether any other person relevant to the proceeding will appear by audio, video, or in person as set forth in § 416.1436(c)(4).

[FR Doc. 2023-10564 Filed: 5/18/2023 8:45 am; Publication Date: 5/19/2023]